IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5452 OF 2004

The United India Insurance Company Limited : Petitioner (Orig.Insurer)

V/s.

Shri Dhirendranath Shridev Dube & Anr. : Respondents (Orig.Applicant and Orig. Opp. Party)

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Mr.S.R.Singh with Ms Bhavana Bhatt for the petitioner.

Mr.M.B.Kotak for the respondent no.1.

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CORAM : S.A. BOBDE, J.

August 10, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Kotak, learned counsel, appears and waives service of rule on behalf of the respondent no.1.

Heard by consent.

2. The petitioner-Insurance Company has challenged the order at exh.‘C’ dated 9.3.2004 granting compensation of

Rs.25,000/- to the respondent under section 140 of the Motor Vehicles Act, 1988, hereinafter referred to as the "Act". The learned counsel for the petitioner contends that on the date of the accident i.e. on 18.8.2002 the vehicle was not validly insured.

3. I find from a perusal of the order that this contention has been examined by the learned Member of the M.A.C.T., who has observed that the vehicle bearing registration no.MH-02-R-9478 was insured with the Insurance Company under Motor Vehicle Cover Note no.852645 for the period from 25.05.2002 to 24.05.2003. Clearly, the date of the accident was within this period.

4. The learned counsel for the petitioner submitted that the Cover Note was not valid in view of the fact that subsequently the cheque for payment of the premium for insurance of the vehicle issued by the assured had bounced.

5. Mr.Kotak, the learned counsel for the respondent no.1, relied on the judgement of the Supreme Court in New India Assurance Co. Ltd. v. Rula (2000 ACJ 630) wherein Their Lordships have accepted a similar contention regarding the cancellation of the policy due to dishonour of cheque.

Their Lordships have laid down that the payment of premium is not the concern of the third party and, therefore, subsequent cancellation of policy due to dishonour of cheque would not affect the rights of a third party. Clearly, the respondent no.1 herein is a third party who is not concerned with the payment of premium under the Cover Note.

6. It was contended by the learned counsel for the petitioner that the Cover Note was not valid for one year. There is no evidence produced by the petitioner on record to show that the finding of the Court, which is a pure finding of fact, is not correct in this regard. There is no averment in the petition on oath that the Cover Note was valid only for 15 days and was not in force on the date of the accident. Having regard to the provisions of section 145 of the Act, there is no doubt that the Cover Note has the same force of a Certificate of Insurance. Section 145(b) of the Act reads as follows:-

> "(b) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of sub-section (3) of Section 147 and includes a cover note complying with such

> requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be."

7. In the circumstances, this case does not call for any interference. The main claim which is pending shall be decided on its own merits. The rule is discharged.

S.A. BOBDE, J.